Supreme Court of the State of Vermont

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

VT. SUPREME COURT
FILED IN CLERK'S OFFICE

AUG 29 2001.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-099

AUGUST TERM, 2001

Peter P. Mitrano	}	APPEALED FROM
	}	
v.	}	Windsor Family Court
	}	
Virginia L. Kelly	}	
	}	DOCKET NO. 9-1 -01 Wrdm
		Trial Judge: Paul F. Hudson

In the above-entitled cause, the Clerk will enter:

Father Peter Mitrano appeals from the family court's dismissal of his action seeking to enforce a custody decree from the State of Virginia under the Parental Kidnapping Prevention Act, 28, U.S.C § 1738A(a). Mother Virginia Kelly cross-appeals, arguing the trial court erred by not awarding attorney's fees and costs. We affirm.

The following facts in the record are not disputed by father. He and mother were married and had three children together. They were divorced by an order of a Virginia court in September 1992, which granted the parties joint physical and legal custody. Both parties moved to Hanover, New Hampshire in 1993 and resided in the same household there until October 2000, not as husband and wife, however.

As father catalogued in a "notice of related matters" filed with the trial court, mother filed an emergency petition seeking custody of the parties' three children in a New Hampshire court on October 16, 2000. Mother was living in Vermont at the time she filed the petition and had been since October 6. The court granted the emergency petition with respect to the parties' daughter. Following a contested hearing on the matter in December, the court continued the temporary order with respect to the daughter, indicating it would schedule a final hearing on mother's petition.

At the end of December, father moved to Virginia with the parties' two sons without notifying mother. Mother then sought an ex parte order from the New Hampshire court granting her temporary custody of the boys, which the court granted on January 3, 2001. Mother sought enforcement of the New Hampshire order in Virginia. Initially the Virginia court issued an order on January 4 prohibiting either party from removing the children from Virginia. The next day, the court entered an order stating that father should obey the New Hampshire order. As father concedes in his notice of related matters, the Virginia courts thereafter declined to exercise jurisdiction over the matter in response to two of father's petitions to enforce the original 1992 divorce order, deferring to the New Hampshire court. On January 10, father sought relief in the New Hampshire Supreme Court, seeking to stay the orders of the trial court and enjoin further action. The status of that action is unclear.

While the New Hampshire proceedings were pending and simultaneous with the petitions for enforcement he filed in Virginia, father also sought relief in Vermont. On January 9, he filed an enforcement action in Vermont family court under 28 U.S.C. § 1738A(a) (providing for full faith and credit for custody decrees of other states), again seeking to enforce the parties' original 1992 divorce decree. Mother filed a motion to dismiss and sought attorney's fees.

The court granted the motion to dismiss, determining that New Hampshire was properly exercising jurisdiction under the PKPA, and that the Virginia order had been superceded by the proceedings in New Hampshire. The court determined, however, that mother was not entitled to attorney's fees under 15 V.S.A. § 1043, which governs actions brought to enforce foreign custody decrees. Father appeals and mother cross appeals.

Father argues that the trial court improperly determined that his complaint failed to state a claim upon which relief may be granted under V.R.C.P. 12(b)(6), pointing out that we must assume all of the factual allegations in his complaint are true and confine ourselves to the "four comers" of his complaint in our review. Father ignores, however, the trial court's more important determination that New Hampshire was properly exercising jurisdiction over the question of custody of the parties' children at the time he sought relief in the Vermont court. This creates a more fundamental jurisdictional problem under the PKPA. Subsection (g) of the PKPA states:

> A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to

> make a custody or visitation determination.

28 U.S.C. § 1738A(g). If New Hampshire was properly exercising jurisdiction under the PKPA, the pendency of the action there would prevent Vermont from exercising jurisdiction under the statute.

Father argues, however, that the New Hampshire court was not exercising jurisdiction consistent with the PKPA because he moved to Virginia with the parties' sons on December 20, and because mother had moved to Vermont on October 6, the parties' daughter joining her following the October 16 order. He concludes that these events deprived New Hampshire of "home state" status. This argument is without merit. The PKPA provides that a state makes a custody determination consistent with the PKPA if it has jurisdiction under its own laws and "such State ... is the home State of the child on the date of the commencement of the proceeding." 28 U.S.C. 1738A(c)(1) & (2)(A) (emphasis added); see also Rocissono v. Spykes, 170 Vt. 309, 313 (2000) (PKPA's jurisdictional criteria generally should be considered with respect to circumstances existing at the time the custody proceeding is initiated). "Home state" is defined as "the State in which, immediately preceding the time involved, the child lived with his parents [or] a parent ... for at least six months." 28 U.S.C. § 1738A(b)(4). The parties and their children had been living in New Hampshire for the seven years prior to the court assuming jurisdiction on October 16, 2000, when

the modification proceeding was commenced by mother's petition.' Furthermore, father stated in his filing before the trial court that Virginia - the state issuing the original custody decree - had declined jurisdiction in favor of New Hampshire. See 28 U.S.C. § 1738A(f) (allowing modification of a custody decree from another state if the state has declined to exercise jurisdiction over modification). Therefore, the trial court properly determined that the New Hampshire court was exercising jurisdiction consistent with the PKPA.

Nevertheless, father also argues that an enforcement action is not a "custody determination" as used in the PKPA, therefore the statute does not prevent the Vermont court from exercising jurisdiction. The PKPA defines "custody determinati on" as any order, temporary or permanent that provides for the custody of a child. 28 U.S.C. § 1738A(b)(3). Furthermore, "physical custody" is defined as "actual possession and control of a child," 28 U.S.C. § 1738A(b)(7), which is exactly what father seeks through his enforcement action. Because another proceeding regarding the custody of the parties' children was pending in New Hampshire, which was exercising jurisdiction consistently with the PKPA, the trial court properly dismissed father's action seeking physical custody of the parties' children via enforcement of the parties' original Virginia divorce decree.' But see Matthews v. Rilgy, 162 Vt. 401, 408 n.9 (1994) (noting in dicta that, "[s]trictly speaking," UCCJA does not apply to contempt proceedings, even to enforce a custody decree, therefore court was not obligated

to contact court of other state that had modified original custody decree which father was seeking to enforce).

With regard to mother's cross-appeal, the trial court determined that it did not have power to award attorney's fees under 15 V.S.A. § 1043(b). Mother had sought attorney's fees and costs under the section, which provides "[a] person violating a custody decree of another state which makes it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or his witnesses." 15 V.S.A. § 1043(b). The court determined that this section was limited to the party enforcing a decree, not a party defending against an enforcement action.

On appeal, mother argues that the trial court could have alternately awarded attorney's fees under its inherent authority to do so in divorce proceedings, citing Smith v. Stewart, 165 Vt. 364 (1996) and Harris v. Harris, 168 Vt. 13 (1998). We agree and remand for a determination of attorneys fees.

Affirmed, except for the issue of attorney's fees, which order of denial is reversed and remanded.

[1] The fact that mother moved to Vermont on October 6, and the fact that the children visited with her the two weekends preceding

October 16 does not change the "home state" status of New Hampshire at the time mother filed her petition seeking to modify custody. 28 U.S.C. § 1738A(b)(4) (providing that temporary absences by the children from their home state are counted as part of the six-month period that qualifies a state as such).

[2] In light of our disposition, we need not address father's argument that "home state" jurisdiction is not necessary for the family court to entertain an enforcement action. We have previously noted, however, "requiring UCCJA jurisdiction as a predicate to enforcement would defeat the purpose of the PKPA, which mandates that all states must enforce custody determinations made consistent with PKPA requirements, regardless of whether they could exercise jurisdiction to make a custody determination." Matthews v. Rilgy, 162 Vt. 401, 414 (1994). Furthermore, because we base our decision strictly on information in father's brief and in the trial court record, we will deny father's motion to strike portions of mother's brief and supplemental printed case.

BY THE COURT:

_____/s/_____
James L. Morse, Associate Justice

_____/s/_____
Denise R. Johnson, Associate Justice

_____/s/_____
Marilyn S. Skoglund, Associate Justice

ENTRY ORDER

VERMONT SUPREME COURT DOCKET NO. 2001-099

AUGUST TERM, 2001

PETER P. MITRANO*	}	APPEALED FROM
	}	Windsor Family
v.	}	
	}	DOCKET NUMBER.
VIRGINIA L. KELLY**	}	9-1-01 Wrdm
	}	

In the above-entitled cause, the Clerk will enter:

A decision having issued in the above appeal, appellant's motion to supplement the record on appeal is denied as moot.

[ ] Publish

[x] Do Not Publish

FOR THE COURT:

_____/s/_____
James L. Morse, Associate Justice

Filed by Clerk: Jan 23, 2001

STATE OF VERMONT
WINDSOR COUNTY, SS.

PETER PAUL MITRANO, Petitioner :
:
v. :
:
VIRGINIA LEE KELLY, Respondent :

VERMONT FAMILY COURT

WINDSOR COUNTY

DOCKET NO. F9- 1 -01 Wrdmd

DECISION RE: MOTION TO DISMISS AND FOR ATTORNEY'S FEES

On January 9, 2001, Petitioner Peter Paul Mitrano filed an "Emergency Petition for Enforcement of the Attached Custody Order." He seeks to enforce an Order of joint custody over the parties' three minor children, issued on September 4, 1992, by Circuit Court of Fairfax County, Virginia. (Chancery Nos. 123690 and 124672).

On January 11, 2001, Respondent Virginia Lee Kelly filed a Motion to Dismiss and for Attorney's Fees. Respondent's motion explains that more recently the parties have litigated

custody issues in the Family Court in Lebanon, New Hampshire. (No. 2000-M-193). Although the procedural history is not entirely clear, it appears that (1) petitions were filed in New Hampshire during October of 2000, (2) at that time the parties lived in New Hampshire, where they had lived for approximately seven years, (3) Judge Cyr of the New Hampshire court issued an ex parte order on October 16, 2000, granting temporary custody of one of the children to Ms. Kelly, (4) Judge Martin of the New Hampshire court held a hearing on December 14, 2000, to address issues of custody, and (5) Judge Martin of the New Hampshire court issued a decision on December 28,2000, granting temporary custody of the children to Ms. Kelly. Based on this additional information, respondent requests this court to dismiss the petition, because the Virginia Order has been superseded.

Petitioner does not deny that the New Hampshire Family Court has issued orders addressing custody. Instead, he argues that the New Hampshire orders are not entitled to full faith and credit because of failure to comply with the PKPA, 28 U. S.C. § 1738A. Petitioner stresses that respondent and the children are now living in Norwich, Vermont, and that all of the parties ceased residing in the State of New Hampshire by December 20, 2000. According to petitioner's argument, New Hampshire is thereby deprived of PKPA jurisdiction, under § 173 8A(c)(2)(A)(ii).

However, this court disagrees with petitioner's interpretation of the PKPA. "Home State" is defined as follows:

> § 1738A(b)(4). "Home State" means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, ... Periods of temporary absence of any of such persons are counted as part of the six-month period.

Based on the undisputed facts, the condition under § 1738A(c)(2)(A)(i) was met because New Hampshire was the "home state" on the date of the commencement of the proceedings. Contrary to petitioner's argument, New Hampshire was not deprived of PKPA jurisdiction merely because the parties left.

Petitioner is not entitled to enforcement of the Virginia Order, because it has been superseded by the New Hampshire Order. The court will dismiss the petition for failure to state a claim upon which relief may be granted.

Respondent also asks for attorney's fees under 15 V.S.A. § 1043. However, § 1043 applies to filing and enforcement of a custody decree of another state. Respondent has simply requested dismissal of the petition. Her motion is granted, but the court declines to award attorney's fees.

ORDER

Respondent's Motion to Dismiss is GRANTED. Respondent's Motion for Attorney's Fees is DENIED.

Dated this 23rd day of January, 2001.

_____/s/_____
Hon. Paul F. Hudson, Presiding Judge

Title 28, United States Code, Section 1738A, also known as the Parental Kidnapping Prevention Act or "PKPA"

§ 1738A. Full faith and credit given to child custody determinations

(a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g), and (h) of this section, any custody determination or visitation determination made consistently with the provisions of this section by a court of another State.

(b) As used in this section, the term-

(1) "child" means a person under the age of eighteen;

(2) "contestant" means a person, including a parent or grandparent, who claims a right to custody or visitation of a child; child and his parents, or the child and at least one

(3) "custody determination" means a judgment, decree, or other order of a court providing for the custody of a child, and includes permanent and temporary orders, and initial orders and modifications;

(4) "home State" means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting; is parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived

from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;

(5) "modification" and "modify" refer to a custody or visitation determination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody or visitation determination concerning the same child, whether made by the same court or not;

(6) "person acting as a parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;

(7) "Physical custody" means actual possession and control of a child;

(8) "State" means a State of the United States, the District of Columbia,

the Commonwealth of Puerto Rico, or a territory or possession of the

(9) "visitation determination" means a judgment, visitation of a child and includes permanent and temporary orders and initial orders and modification faith and credit in every court within the United

(c) A child custody or visitation determination made by a court of a State is consistent with the such State; and

(1) such court has jurisdiction under the law of such State; and

(2) one of the following conditions is met:

(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months before the date of the

commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B) (i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(C) the child is physically present in such State and (I) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse;

(D) (i) it appears that no other State would have jurisdiction under subparagraph (A), (B),(C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody or visitation of the child, and (ii) it is in the best interest of the child, that such court assume jurisdiction;

or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

(d) The jurisdiction of a court of a State which has made a child custody or visitation determination consistently with the provisions of

this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

(e) Before a child custody or visitation determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if—

(1) it has jurisdiction to make such a child custody determination; and

(2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody or visitation determination.

(h) A court of a State may not modify a visitation determination made by a court of another State unless the court of the other State no longer has jurisdiction to modify such determination or has declined to exercise jurisdiction to modify such determination.

IN THE STATE OF VERMONT
IN THE WINDSOR FAMILY COURT

PETER PAUL MITRANO,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No.: F9-1-01
	)	
VIRGINIA LEE KELLY (formally Mitrano),	)	
	)	
Respondent.	)	

EMERGENCY PETITION FOR ENFORCEMENT

COMES NOW, the petitioner, Peter Paul Mitrano, *pro se*, and states his Emergency Petition for Enforcement of the Attached Custody Order as follows:

1. The petitioner, Peter Paul Mitrano, is a resident of the County of Fairfax in the Commonwealth of Virginia. The petitioner, Peter Paul Mitrano, resides at 4912 Oakcrest Drive, Fairfax, Virginia 22030.

2. The respondent, Virginia Lee Kelly (who was formerly known as Virginia Lee Mitrano) is a resident of Norwich, Vermont. The respondent, Virginia Lee Kelly, resides at Newton Lane, Norwich, Vermont 05055. The respondent,

Virginia Lee Kelly, receives mail at the address of Post Office Box 1248, Norwich, Vermont 05055.

3. The petitioner, Peter Paul Mitrano, and the respondent, Virginia Lee Kelly were previously married and are now divorced. *See* Chancery Numbers 123690 and 124672 from the Circuit Court of Fairfax County, Virginia.

4. The petitioner, Peter Paul Mitrano, and the respondent, Virginia Lee Kelly Mitrano had three children during their marriage: Christina Lee Mitrano (now age 15), Peter Paul Mitrano (now age 14) and Christopher Louis Mitrano (now age 9).

5. On Thursday, January 4, 2001, the defendant, Virginia Lee Kelly Mitrano attempted to take Peter Paul Mitrano (age 14) and Christopher Louis Mitrano (age 9) out of school in Fairfax, Virginia to Vermont based upon an ex parte order from the State of New Hampshire. Later in the day on Thursday, January 4, 2001, the defendant, Virginia Lee Kelly Mitrano attempted to take Peter Paul Mitrano (age 14) and Christopher Louis Mitrano (age 9) from their home at 4912 Oakcrest Drive, Fairfax, Virginia. See the attached order from the State of New Hampshire. After the petitioner produced Peter Paul Mitrano (age 14) and Christopher Louis Mitrano (age 9) for visitation in Fairfax, Virginia, the respondent failed to return the children to petitioner in accordance with the attached custody Order of the Circuit Court of Fairfax County, Virginia. Said custody Order of the Circuit Court of Fairfax County, Virginia has also been registered in the State of New Hampshire, Judicial Branch, Family Division at Lebanon.

6. The petitioner denies that the State of New Hampshire has jurisdiction to determine custody of said children pursuant to Title 28 of the United States Code, Section 1738A. Petitioner further states that as of the end of the day of December 20, 2000, neither the petitioner, respondent nor any of the parties' children have lived in the State of New Hampshire. *See* Title 28 of the United States Code, Section 1738A. Petitioner further states that the respondent has been a resident of Town of Norwich in the State of Vermont since on or about October 1, 2000. Since October 6, 2000, the children have lived with the respondent in the State of Vermont from at least 6:00 P.M. on Friday, October 6, 2000 until school started at approximately 8:00 A.M. on Monday, October 9, 2000 and from 6:00 P.M. on Friday, October 13, 2000 until school started at approximately 8:00 A.M. on Monday, October 16, 2000. Accordingly, prior to the date of a filing of petition to modify a custody order in the State of New Hampshire which was October 16, 2000 and on October 16, 2000, the children were living in both the State of Vermont and the State of New Hampshire. The petitioner has been a resident of the Commonwealth of Virginia since December 21, 2000. Peter Paul Mitrano (age 14) and Christopher Louis Mitrano (age 9) have been residents of the Commonwealth of Virginia since December 21, 2000 until they were taken away today, January 8, 2001, by the respondent. Accordingly, because there is and has been no contestant nor child living in the State of New Hampshire since the end of the day of December 20, 2000, the State of New Hampshire does not

have jurisdiction to even consider making a modification of the existing custody Order of the Circuit Court of Fairfax County, Virginia for said children pursuant to Title 28 of the United States Code, Section 1738A. *Also see* the attached permanent custody Order of the Circuit Court of Fairfax County, Virginia from 1992 that has remained in effect since 1992. *Also see* Code of Virginia, Section 20-108 providing for continuing jurisdiction of the Circuit Court of Fairfax County, Virginia to change or modify said attached permanent custody Order of the Circuit Court of Fairfax County, Virginia. *Arguendo*, even if the State of New Hampshire were to have jurisdiction to modify the attached permanent custody Order of the Circuit Court of Fairfax County, Virginia, any orders from the State of New Hampshire that are ex parte orders wherein no notice whatsoever was given to petitioner (including petitioner's attorney located in the State of New Hampshire) nor where no opportunity to be heard was given petitioner are unenforceable outside the State of New Hampshire pursuant to Title 28 of the United States Code, Section 1738A.

7. Based upon information and belief, the children Christina Lee Mitrano (now age 15), Peter Paul Mitrano (now age 14) and Christopher Louis Mitrano (now age 9) are located at the home of the respondent, Virginia Lee Kelly at Newton Lane, Norwich, Vermont 05055

8. WHEREFORE the petitioner, Peter Paul Mitrano, *pro se*, respectfully requests that this Honorable Court enforce the attached permanent custody Order of the Circuit Court of Fairfax County, Virginia and further order that

the children of the parties: Christina Lee Mitrano (now age 15); Peter Paul Mitrano (now age 14); and, Christopher Louis Mitrano (now age 9) be immediately returned to the petitioner, Peter Paul Mitrano.

Respectfully requested,

Peter Paul Mitrano
Pro se
4912 Oakcrest Drive
Fairfax, Virginia 22030

(703) 591-7250

Petitioner

Dated: January 8, 2001.

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PETER PAUL MITRANO

Plaintiff/Cross-Defendant

v. In Chancery No. 123690 124672

VIRGINIA LEE KELLY MITRANO

Defendant/Cross-Plaintiff

ORDER

THIS CAUSE came to be heard on the 6th day Of July 1992, upon the cross Motions of Plaintiff and Defendant for entry Of an order granting each of them sole custody of their minor children, and appropriate visitation to the other party. Both parties having been present in court with their counsel.

IT APPEARING TO THE COURT that there were three (3) children born of this marriage, to-wit: CHRISTINA LEE MITRANO, born on the 4th day of October 1985 (6 years); PETER PAUL MITRANO, born on the 27th day of December 1986 (5 years); and CHRISTOPHER LOUIS

MITRANO born on the 21st day of December 1991 (6 months); and

IT FURTHER APPEARING TO THE COURT after hearing testimony of the parties, their witnesses, and upon the argument of counsel, that the following is an appropriate order to be, entered in this cause, it is therefore

ORDERED that Plaintiff, Peter Paul Mitrano, (Peter), and Defendant, Virginia Lee Kelly Mitrano (Virginia), shall have joint physical and legal custody of their minor children, to-wit: CHRISTINA LEE MITRANO, PETER PAUL MITRANO and CHRISTOPHER LOUIS MITRANO, and it is further

ORDERED that the minor children of the parties shall reside primarily with Peter, and the minor children shall be with their mother on each Wednesday from 5:00 p.m. until 8:00 p.m., for dinner, and the first three weekends of each month beginning at 6:00 p.m. on the first Friday of each month continuing until Monday at 9:00 a.m., or when school begins, whichever is most appropriate under the circumstances, [the parties agree to re schedule in the event of changes to the schedule to their satisfaction] and it is further

ORDERED that in addition to the time set forth above, Peter and Virginia shall have the children with them the following times (these times shall supercede the times immediately set forth above in the event of a conflict):

(a) Christmas: Unless Peter takes the children on vacation during the Christmas holiday, which would be for a maximum of one weeks time, the minor children will spend the day of Christmas Eve, Christmas Eve and Christmas morning until 10:00 a.m. with Peter, and from 10:00 a.m. Christmas Day until 10:00 a.m. on New Years Day with Virginia. For the rest of the Christmas break, both before Christmas and after New Years, the minor children will be with Peter; except, the minor child, PETER PAUL MITRANO, shall celebrate his birthday with Peter on the actual day it falls.

(b) Easter and Thanksgiving: The minor children of the parties will be with Virginia on Easter weekend [& Spring Break, unless Peter takes the children on vacation and gives 30 days notice to Virginia of his intention to take the children for the vacation] and they will be with Peter on Thanksgiving and the three days following Thanksgiving.

(c) Mothers and Fathers Day: The minor children of the parties will be spend time with the appropriate parent on the appropriate parent's day.

(d) Birthdays: Two of the minor children of the parties, CHRISTINA LEE MITRANO and CHRISTOPHER LOUIS MITRANO, will celebrate their birthdays in whichever parents home they may be in on the specific date of their birthday. For all three children, the parent with whom they are not with at that particular time, will be invited

to participate in the birthday celebration. In addition, each parent will have the right to be with the children, for an appropriate period of time under the particular circumstances as they exist, on their own particular birthdays.

(e) Summer Vacation: The parties will add the number of days between the end of school and the beginning of the next school year and divide by 2; Virginia shall have the first half of the summer and Peter shall have the second half of the summer. So long as each of the parties remains in the Washington Metropolitan Area during their summer time with the children, the other patty shall have rights to reasonable time to spend with the minor children; and it is further

ORDERED that each party shall have equal access to medical records, consultations with physicians regarding the medical condition of the children, and school records of the minor children of the parties. In the event that either party shall obtain a document pertaining to the medical condition of the children, or school report cards, a copy of that document shall be provided to the other parent; and it is further

ORDERED that each of the parties shall consult with each other with regards to all major decisions made for the benefit of the children. In the event they are unable to agree, then they shall consult with Dr. Jeffrey Schulman, or some other agreed upon third person; and it is further

ORDERED that each of the parties shall participate in a seminar or course consisting primarily of receiving training in the art of mediation, and it is further

ORDERED that in the event the parties cannot reach a consensus on decisions regarding the welfare of the children, then the particular parties' area of responsibility for decision making' shall be as follows: Virginia shall have decision making powers in the areas of recreational and social activities, hobbies (all non-school related) and health. Peter shall have decision making powers in the areas of the minor children's' education and religious upbringing and training.

ENTERED this 4 day of September 1992.

_____/s/_____
ROSEMARIE ANNUNZIATA, JUDGE

Smolen & Plevy P.C.

_____/s/_____
Alan B. Plevy, Esquire
1045 Leesburg Pike/750

Vienna, Virginia 22182
Counsel for Peter Paul Mitrano
VA Bar # 017165
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Shoun Smith & Bach P.C.

_____/s/_____
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